



Norman H. Bangerter  
Governor  
Dee C. Hansen  
Executive Director  
Dianne R. Nielson, Ph.D.  
Division Director

# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340

*Wayne's Copy*

DOGM  
MINERALS PROGRAM  
FILE COPY

March 4, 1991

Dave Rupp  
Bureau of Water Pollution Control  
Division of Environmental Health  
288 North 1460 West  
P. O. Box 16690  
Salt Lake City, Utah 84116-0690

Michael Jackson  
Bureau of Land Management  
150 East 900 North  
Richfield, Utah 84701

Dear Messrs. Rupp and Jackson:

Re: Jumbo Mining Company, Drum Mine, Millard County, Utah,  
Cause No. M/027/007

Enclosed for your information and file is a copy of Jumbo Mining Company's Petition requesting that the Board of Oil, Gas and Mining review the January 14, 1991 Division Order denying them permission to conduct leak tests and "mining operations" on Heap No. LG2 and Heap No. 7. This Petition was filed with the Division January 24, 1991, and is docketed to be heard before the Board at its regularly scheduled meeting on March 28, 1991.

Also enclosed is Western States Minerals' Response to Jumbo Mining's Petition that was filed with the Division February 8, 1991.

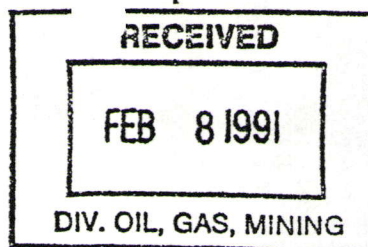
We may contact you for further information prior to the hearing. Any subsequent, pertinent material in this matter will be copied to you.

Best regards,

Dianne R. Nielson  
Director

jlb  
Enclosures

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JAMES R. HAISLEY  
DAVIS, GRAHAM & STUBBS  
1600-87 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111-1006  
Telephone: (801) 328-6000

STEPHEN D. ALFERS  
LISA M. BAIN  
RICHARD A. WESTFALL  
DAVIS, GRAHAM & STUBBS  
370 Seventeenth Street  
P.O. Box 185  
Denver, Colorado 80201-0185  
Telephone: (303) 892-9400

Attorneys for Western States  
Minerals Corporation

BEFORE THE BOARD OF OIL, GAS AND MINING,  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

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IN THE MATTER OF JUMBO MINING	)	RESPONSE OF WESTERN STATES
COMPANY'S PETITION FOR FORMAL	)	MINERALS CORPORATION TO
HEARING	)	JUMBO MINING COMPANY'S
	)	PETITION FOR COMMENCEMENT OF
	)	PROCEEDINGS BEFORE THE BOARD
	)	OF OIL, GAS AND MINING TO
	)	REVIEW ORDER OF DIVISION TO
	)	PETITION FOR INFORMAL
	)	PROCEEDINGS DENYING
	)	PERMISSION TO CONDUCT LEAK
	)	TESTS
	)	DOCKET NO. 91-002
	)	CADSE
	)	Division File No. M/027/007

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On January 24, 1991 Jumbo Mining Company ("Jumbo")  
filed with the Utah Board of Oil, Gas and Mining (the "Board") a  
Petition for Commencement of Proceedings Before the Board of Oil,



Gas and Mining to Review Order of Division to Petition for Informal Proceedings Denying Permission to Conduct Leak Tests (the "Petition"). The purpose of Jumbo's Petition is to request that the Board reverse an Order of the Division of Oil, Gas and Mining (the "Division") dated January 14, 1991. In that Order, the Division correctly determined that Jumbo is not authorized to conduct the so called "leak tests" on heap leach pads No. LG2 and No. 7 which were then, and are now, subject to a mining permit issued to Western States Minerals Corporation ("Western States"). The Division's file number for this matter is M/027/007.

Because Western States is the permittee of record for these heap leach pads, Western States' interests and obligations arising from the permit may be adversely affected by Jumbo's Petition. Therefore, Western States seeks to participate as a respondent in these proceedings, and respectfully requests that the Board deny Jumbo's Petition and affirm the Order of the Division. Western States will more fully set forth the facts and reasons supporting its position once the Board has scheduled a formal hearing.

Dated this 7<sup>th</sup> day of February, 1991.

DAVIS, GRAHAM & STUBBS

By James R. Haisley  
James R. Haisley, Esq.  
1600-87 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111

STEPHEN D. ALFERS, Esq.  
LISA M. BAIN, Esq.  
RICHARD A. WESTFALL, Esq.  
DAVIS, GRAHAM & STUBBS  
370 Seventeenth Street  
P.O. Box 185  
Denver, Colorado 80201-0185

Attorneys for Western States  
Minerals Corporation

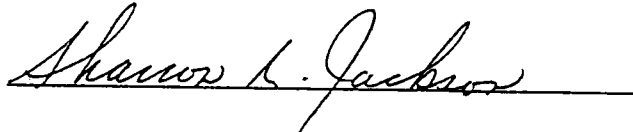
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RESPONSE OF WESTERN STATES MINERALS CORPORATION was served by depositing same in the United States mail, first class postage prepaid, on the 7<sup>th</sup> day of February, 1991, addressed to the following:

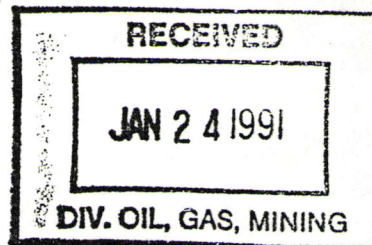
Mr. E. B. King  
Jumbo Mining Company  
6305 Fern Spring Cove  
Austin, Texas 78739

Steven E. Clyde, Esq.  
Attorney for Jumbo Mining Company  
CLYDE, PRATT and SNOW  
200 American Savings Plaza  
77 West 200 South  
Salt Lake City, Utah 84101

Mr. Lowell P. Braxton  
Associate Director, Mining  
Division of Oil, Gas and Mining  
Department of Natural Resources  
355 West North Temple  
31 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203

  
Shawn L. Jackson

Steven E. Clyde (Bar No. 0686)  
CLYDE, PRATT & SNOW  
A Professional Corporation  
Attorneys for Jumbo Mining  
200 American Savings Plaza  
77 West 200 South  
Salt Lake City, Utah 84101  
Telephone: (801) 322-2516



DOGM  
MINERALS PROGRAM  
FILE COPY

*W/O  
attachment*

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BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

---

In re:	:	
JUMBO MINING COMPANY, DRUM	:	PETITION FOR COMMENCEMENT OF
MINE PERMIT M/027/007,	:	PROCEEDINGS BEFORE THE BOARD
	:	OF OIL, GAS AND MINING TO
	:	REVIEW ORDER OF DIVISION TO
	:	PETITION FOR INFORMAL
	:	PROCEEDINGS DENYING PERMISSION
Petitioner.	:	TO CONDUCT LEAK TESTS
	:	DOCKET NO. 91-002
	:	CAUSE
	:	<del>Division-File</del> No. M/027/007
	:	(Formal Hearing Requested)

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Petitioner, Jumbo Mining Company ("Jumbo"), hereby requests the commencement of a formal adjudicative proceeding and formal hearing before the Board of Oil, Gas & Mining or its designated hearing examiner in conformance with the Rules of Practice and Procedure of the Division of Oil, Gas and Mining (the "Division"), including Rules R613-005-106 and R613-005-107 and Utah Code Ann. § 63-46b-1 et seq., to review the Division's informal decision denying Jumbo's request to conduct leak tests on two heap leach pads by amending its mining permit under Rule R613-004-119 and the Division's requiring the transfer of Western States Minerals Corporation's ("Western States") mining permit relating to Heaps LG 2 and 7 in Millard County, Utah, under Rule R613-004-120, as a



precondition to Jumbo's conducting leak tests that have been ordered by a sister state agency.

By this request for formal adjudicative proceedings, Jumbo seeks a reversal of the Division's informal decision and requests that the Board allow Jumbo to amend its mining permit and that the Board accept the reclamation bond that Jumbo has tendered pursuant to the request of the Division and allow Jumbo to conduct the leak tests in compliance with the directives of the Utah Bureau of Water Pollution Control.

In support of this request for formal agency action, Jumbo alleges as follows:

1. The names and addresses of all persons to whom notice of agency action should be given are as follows:

Jumbo Mining Company  
Mr. E.B. King  
6305 Ferns Spring Cove  
Austin, Texas 78739

Western States Minerals Corporation  
c/o Stephen D. Alfers, Esq.  
Davis, Graham & Stubbs  
P.O. Box 185  
Denver, Colorado 80201-0185

Steven E. Clyde, Esq.  
Clyde, Pratt & Snow  
77 West 200 South, Suite 200  
Salt Lake City, Utah 84101  
Attorneys for Jumbo

Mr. Lowell P. Braxton  
Associate Director, Mining  
Division of Oil, Gas & Mining  
Department of Natural Resources  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203

2. The Division's file number for this matter is M/027/007.

3. This request for formal agency action is filed pursuant to the authority granted in the Division's Administrative Rules, including Rules R613-005-106 and R613-005-107 for a formal adjudicative proceeding to review the Division's informal decision affirming the Division's denial of Jumbo's request to amend its mining permit under Rule R613-004-119, and imposing the requirement of a partial permit transfer under R613-004-120 as a precondition to Jumbo's conducting leak tests on these heaps.

4. The facts upon which this request for formal agency action is based are as follows:

(a) Jumbo seeks to comply with the requirements of the Utah Department of Health to provide evidence that two existing heap leach pads do not leak and are otherwise suitable for continued use. These heaps were constructed by the prior permit holder and owner of the property, Western States. Western States failed to obtain construction and discharge permits from the Bureau of Water Pollution for these two heap pads, among others. Western States operated these heaps for several years without a permit, during which time no leaking of leaching solution was noted in the record. Shortly before the mine was conveyed and the leases assigned by Western States to Jumbo, the Utah Bureau of Water Pollution Control ordered that these heaps be removed from service since they were not governed by a permit.

(b) These heaps were the last to be constructed by Western States. They appear to be in good condition.



(c) The Bureau of Water Pollution Control had requested that Jumbo drill approximately ten monitoring wells around the perimeter of these heaps and have these monitoring wells logged by neutron and gamma methods both before and after testing. Jumbo was also to submit various geological maps, etc. The heaps were then to be sprinkled with available solutions for a minimum of sixty (60) days, and all monitoring wells were to be logged again to determine if increased moisture could be detected in the soil.

(d) During 1989, Jumbo expended considerable sums of money to complete all of these required preliminary steps and started testing the sprinkling in the fall of 1989. However, shortly after the testing started, it was terminated due to the fact that severe cold weather prevented Jumbo from pumping the water from the well located seven miles from the heaps.

(e) During the spring of 1990, the monitoring wells were relogged as required and preparation started for new leak testing. However, on February 22, 1990, Western States sent a letter to the Division of Oil, Gas & Mining objecting to the testing on the grounds that the referenced heaps had not been formally bonded by or transferred to Jumbo as Jumbo had not chosen to assume full responsibility for reclamation of certain portions of the mine site which were in default under the conditions of Western States' permit prior at the time the property was sold to Jumbo. (See Exhibit "A".)

(f) Jumbo has previously provided the Division with a copy of the pertinent section of the recorded Quit-Claim Deed and Assignment whereby the property was transferred from Western States to Jumbo. Importantly, this document explicitly indemnifies Western States for any defaults arising after the date of transfer under any permits, and clearly exempts Jumbo from any consequences of defaults arising prior to the date of such transfers.

(g) Western States has not denied that it has failed to set aside 35,000 to 50,000 cubic yards of top soil as required by its permits prior to its sale of the mining operation to Jumbo. Western States now seeks by refusing to transfer the permit and by initiating litigation in Colorado, to coerce Jumbo into indemnifying it for Western States' previous default under the permits and to use the Division's cooperation to essentially block Jumbo's legitimate use of the property for which it has paid Western States \$1,000,000.00.

(h) The Division concluded on February 28, 1990 that the proposed leak detection test constituted "mining operations" and prohibited Jumbo from proceeding. (See Exhibit "B".)

(i) Subsequently, on May 30, 1990, Jumbo, having failed to receive any cooperation from Western States in this regard, but citing several factors pertinent to the issue, requested the Division's reconsideration of its ruling that the leak test constituted "mining operations" in the normal and usual sense. (See Exhibit "C".)

(j) This request for reconsideration was denied by letter of May 31, 1990, See Exhibit "D". The Division then in a letter of July 12, 1990, emphasized that it could allow Jumbo to commence test leaching of heaps LG 2 and 7: "under either of the following provisions:"

1. JMC (Jumbo) obtain written permission from Western States Mineral Corporation (WSMC) to commence said 60-day test leach of pads No. 2 LG and No. 7.
2. JMC amend their approved permit and update the current reclamation surety accordingly to include pads No. 2 LG and No. 7.

The Division then noted that:

JMC has elected to pursue the second provision as indicated by your June 25th submission. The Division is presently evaluating your proposal for technical adequacy. We hope to provide our review response to you within the near future.

See Exhibit "E" attached hereto.

Jumbo negotiated and posted a cash bond for the full reclamation responsibility for the two heaps in question. It submitted the details regarding the planned leak test for the Division's review and approval. Jumbo also forwarded to Western States and the Division all of the required transfer forms for these two heaps. Western refused to sign the transfer forms in an effort to coerce Jumbo to modify the terms of its agreement.

(k) The State of Utah is still holding Western State's reclamation bond. Jumbo has also tendered the surety in the amount requested by the Division, and upon its acceptance by

the Board, the State of Utah would be doubly bonded for the reclamation of the two heaps. Western State will not transfer the permit and has filed suit in Colorado to resolve the contract dispute between these parties. Jumbo has complied in all respects with the directives of the Division contained in its May 31, 1990 and its July 12, 1990 letters, Exhibits "D" & "E" hereto. Notwithstanding this, the Division has refused granting Jumbo permission to proceed with the leak test.

(1) On October 19, 1990, Jumbo filed its Petition with the Division for commencement of informal proceedings to review the Division's denial of the permit amendment. The facts noted above were set forth in that Petition. In its October 29, 1990 Objection to the Petition for Commencement of Informal Proceedings, Western States erroneously claimed that the purpose of the informal adjudicative proceeding was "to determine, among other things, reclamation responsibility for mining properties located in Millard County, Utah, including the Drum mine." Western States also claimed that it would be inappropriate for the Division to adjudicate the issues and that the Division should take no action to allow Jumbo to operate the Drum mine until the Colorado court system resolved the reclamation issue which was the subject of pending litigation. (See Exhibit "F".)

(m) In its reply to Western States' objection to the Petition, Jumbo clearly demonstrated that Western State had incorrectly characterized the purpose and intent of Jumbo's



Petition. The Petition did not ask the Division to adjudicate the contract dispute that exists between the parties. Instead, it was only seeking the Division's permission to conduct the leak tests on two existing heap leach pads on which it had accepted full reclamation responsibility and posted a cash bond as specified by the Division. (See Exhibit "G".) Western States is effectively seeking to restrain the Division from acting within its proper authority. However, even the Colorado Supreme Court has held that a district court in that state has no authority to issue a restraining order so as to prevent an executive branch board from exercising its authority since to do so would be "a direct and unjustified judicial interference with a function properly delegated to the executive branch of our government." See Banking Board v. District Court, 492 P.2d 837 (Colo. 1972) (en banc).

(n) On January 14, 1991, the Division issued its Order from this informal proceedings. It ruled that the leak tests constitute a "mining operation" and that Jumbo has failed to provide documented approval of Western State's transfer of the heaps to enable the Division to make a determination regarding the transfer of notice of intent regarding the heaps and posting of the related surety. (See Exhibit "H".)

(o) Jumbo takes exception to this determination. It has complied in all respects with the conditions specified in the Division's May 31, 1990 letter and of its July 12, 1990 letter [Exhibits "D" and "E"]. The testing of the integrity of the

plastic liners underneath these two heap leach pads by sprinkling water on them is not mining operations in any sense of that term. Mining operations are defined by the Utah Mined Land Reclamation Act to mean those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including but not limited to, surface mining and surface effects of underground mining, in site mining, on-site transportation, concentrating etc. and other primary processing. See §40-8-4(8)(a) U.C.A. The leak tests were for the sole purpose of determining whether the liners of these leach pads were intact. None of this activity was for the purpose of the exploration, development, extraction or processing of minerals, but instead to see if the heaps were properly constructed so that they might be used for that purpose in the future. The state's interest lies in the reclamation of this property upon the cessation of mining activities. That interest is amply protected through the double bonding for reclamation of these two heaps.

(p) Importantly, it serves neither the interest of the parties nor the interest of the state to allow Western States to refuse to transfer its permit for these heaps in order to hold Jumbo hostage in the conducting of these leak tests. A transfer of Western States' permit is not essential to the conducting of these tests given Jumbo's amended mining reclamation plan and reclamation surety bond. No mining would occur on these heaps unless and until they are properly

permitted by the Bureau of Water Pollution Control and bonded for reclamation through the Division.

Accordingly, Jumbo requests that this matter be set for a formal hearing before the Board or its designated hearing examiner in conformance with the Division's Rules of Practice and Procedure and that the Board reverse the Division's informal decision and approve Jumbo's amended permit and allow it to conduct the leak tests on the two heap pads in compliance with the directives of the Utah Bureau of Water Pollution Control.

Dated this 24th day of January, 1991.

CLYDE, PRATT & SNOW

A handwritten signature in cursive script, appearing to read "Steven E. Clyde", is written over a horizontal line.

STEVEN E. CLYDE  
Attorneys for Petitioner Jumbo Mining

MAILING CERTIFICATE

I hereby certify that the foregoing Petition for Commencement of Proceedings Before the Board of Oil, Gas and Mining to Review Order of Division to Petition for Informal Proceedings Denying Permission to Conduct Leak Tests was mailed, postage prepaid, to the following:

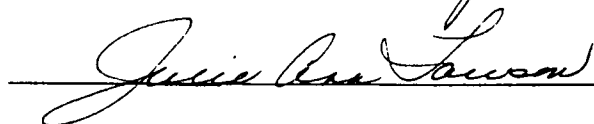
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355 West North Temple  
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Salt Lake City, Utah 84180-1203

Jumbo Mining Company  
Mr. E.B. King  
6305 Fern Spring Cove  
Austin, Texas 78739

Dated this 24th day of Jan., 1991.

  
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